



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

SMC
Docket No: 07092-00
13 December 2000

SGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested removal of the fitness report for 2 June 1996 to 28 February 1997.

It is noted that the Commandant of the Marine Corps (CMC) has amended item 17b of the contested fitness report, reflecting whether the Marine has been the subject of any adverse report from outside the fitness reporting chain, from "Yes" to "No."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 17 October 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice warranting removal of the contested report. In this connection, the Board substantially concurred with the comments contained in the report of the PERB, except they noted your nonjudicial punishment (NJP) of 22 November 1996 was not only for violation of Article 86, Uniform Code of Military Justice (unauthorized absence), as indicated in the PERB report and the contested fitness report, but also for two violations of Article 134 (disorderly conduct and conduct prejudicial to good order and discipline). They further noted that the civil proceedings in your case concerned different charges (burglary, theft and criminal damage); that the result was not an acquittal, but a dismissal because the victim did not wish to prosecute; and that the NJP was not held until after 12 November 1996, the date of the deputy county attorney's letter stating that the criminal charges against you would not

be filed, and that this decision would not be final until 26 November 1996. Under these circumstances, the Board found no unfairness in your having received NJP before the date on which the result of your civil proceedings became final. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1610

MMER/PERB

17 OCT 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 28 Jun 00
(b) MCO P1610.7D w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 11 October 2000 to consider Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 960602 to 970228 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is procedurally incorrect in that the assigned mark in Item 14g (judgment) was based upon pending civil action. To support his appeal, the petitioner furnishes his own statement, a copy of the challenged fitness report, a copy of page 12 from his Service Record Book, and a copy of a letter from the Office of the County Attorney, Yuma, Arizona of November 12, 1996.

3. In its proceedings, the PERB concluded that, with one minor exception, the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. There are two items of significance regarding the challenged fitness report. First, there is absolutely no mention or reference to any pending civil action whatsoever. Second, and of paramount importance, is the fact that during the reporting period the petitioner was the subject of non judicial punishment (NJP) for violation of Article 86 of the UCMJ (unauthorized absence) (so documented on enclosure (3) to reference (a)). That in itself is certainly sufficient justification for a mark of "average" in Item 14g. To this end, the Board discerns absolutely no error or injustice.

b. The Board notes that Item 17b (adverse) should reflect a mark of "no" since there is no indication in the fitness report that the petitioner was the subject of adverse matter from outside the reporting chain. We do not, however, find this minor

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oversight to invalidate the entire report and have directed the necessary changes to both the fitness report and the petitioner's Master Brief Sheet.

4. The Board's opinion, based on deliberation and secret ballot vote, is that modified report should remain a part of Sergeant [REDACTED] official military record. The limited corrective action identified in subparagraph 3b is considered sufficient.

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
[REDACTED]

Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps